

# EXHIBIT 5

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

<hr/>		X
PERRY CIRAULU, Individually and on	:	Civil Action No. 1:14-cv-08659-AKH
Behalf of All Others Similarly Situated,	:	
	:	<u>CLASS ACTION</u>
Plaintiff,	:	
	:	
vs.	:	
	:	
AMERICAN REALTY CAPITAL	:	
PROPERTIES, INC., et al.,	:	
	:	
Defendants.	:	
<hr/>		
BERNARD PRIEVER, Individually and on	:	Civil Action No. 1:14-cv-08668-AKH
Behalf of All Others Similarly Situated,	:	
	:	<u>CLASS ACTION</u>
Plaintiff,	:	
	:	
vs.	:	
	:	
AMERICAN REALTY CAPITAL	:	
PROPERTIES, INC., et al.,	:	
	:	
Defendants.	:	
<hr/>		X

[Caption continued on following page.]

DECLARATION OF JONATHAN FEIGELSON  
IN SUPPORT OF TIAA-CREF'S MOTION FOR CONSOLIDATION,  
APPOINTMENT AS LEAD PLAINTIFF AND  
APPROVAL OF LEAD PLAINTIFF'S SELECTION OF LEAD COUNSEL

<hr/>		X
STUART RUBINSTEIN, Individually and on	:	Civil Action No. 1:14-cv-08669-AKH
Behalf of All Others Similarly Situated,	:	
	:	<u>CLASS ACTION</u>
Plaintiff,	:	
	:	
vs.	:	
	:	
AMERICAN REALTY CAPITAL	:	
PROPERTIES, INC., et al.,	:	
	:	
Defendants.	:	
<hr/>		
KEVIN PATTON, Individually and on Behalf	:	Civil Action No. 1:14-cv-08671-AKH
of All Other Persons Similarly Situated,	:	
	:	<u>CLASS ACTION</u>
Plaintiff,	:	
	:	
vs.	:	
	:	
AMERICAN REALTY CAPITAL	:	
PROPERTIES, INC., et al.,	:	
	:	
Defendants.	:	
<hr/>		
JAMES W. EDWARDS, JR., Individually and	:	Civil Action No. 1:14-cv-08721-AKH
on Behalf of All Others Similarly Situated,	:	
	:	<u>CLASS ACTION</u>
Plaintiff,	:	
	:	
vs.	:	
	:	
AMERICAN REALTY CAPITAL	:	
PROPERTIES, INC., et al.,	:	
	:	
Defendants.	:	
<hr/>		X

[Caption continued on following page.]

BERNEY HARRIS, Individually and on  
Behalf of All Others Similarly Situated,

Plaintiff,

vs.

AMERICAN REALTY CAPITAL  
PROPERTIES, INC., et al.,

Defendants.

SIMON ABADI, on Behalf of Himself and All  
Others Similarly Situated,

Plaintiff,

vs.

AMERICAN REALTY CAPITAL  
PROPERTIES, INC., et al.,

Defendants.

Civil Action No. 1:14-cv-08740-AKH

CLASS ACTION

Civil Action No. 1:14-cv-09006-AKH

CLASS ACTION

I, Jonathan Feigelson, declare as follows:

1. I make this declaration in support of TIAA-CREF's motion for appointment as lead plaintiff and approval of its selection of lead counsel. I have personal knowledge of the matters stated herein and, if called upon, I could and would competently testify thereto.

2. I am the Senior Managing Director, General Counsel and Head of Corporate Governance of TIAA-CREF, a full-service financial services company that employs more than 10,000 employees in more than 100 offices nationwide. I have more than two decades of experience in legal, financial and securities matters. Before joining TIAA-CREF in 2006, I served as a Managing Director and General Counsel at ABN-AMRO's North American operations. Prior thereto, I served as Global Director of Equity Derivatives Compliance for Goldman Sachs and as an Assistant District Attorney in Manhattan under Robert M. Morgenthau in the Frauds Bureau specializing in securities fraud. I am a graduate of Harvard College, the London School of Economics and Columbia Law School.

3. Teachers Insurance and Annuity Association of America ("TIAA") was founded in 1918 by the Carnegie Foundation for the Advancement of Teaching and is a joint stock life insurance company incorporated in New York with its principal place of business in New York. TIAA offers traditional annuities, as well as variable annuities that invest, among other things, in real estate and in mutual funds that invest in equities and fixed income investments. College Retirement Equities Fund ("CREF"), a companion organization to TIAA, is a not-for-profit membership corporation incorporated in New York with its principal place of business in New York. CREF was established in 1952 and was the first company in the United States to issue a variable annuity. CREF is regulated by the New York State Department of Financial Services, and it is also registered as an open-end management investment company under the Investment Company Act of



1940. Together, TIAA and CREF form the principal retirement system for the nation's education and research communities, which is one of the largest retirement systems in the world based on assets under management. As of October 31, 2014, TIAA-CREF serves over 5 million individuals overall (with more than 3.7 million clients in institutional retirement plans) and in excess of \$500 billion in assets.<sup>1</sup>

4. TIAA, College Retirement Equities Fund, TIAA-CREF Equity Index Fund, TIAA-CREF Real Estate Securities Fund, TIAA-CREF Large Cap Value Index Fund, TIAA-CREF Small Cap Blend Index Fund, TIAA-CREF Life Real Estate Securities Fund, and TIAA-CREF Life Equity Index Fund (collectively, "TIAA-CREF"), purchased a substantial amount of American Realty Capital Properties ("ARCP") securities during the Class Period and suffered significant losses in connection therewith. Based upon this substantial financial interest, TIAA-CREF is highly motivated to obtain the maximum recovery possible for all investors victimized by the wrongdoing at ARCP, including the admittedly intentional wrongdoing that occurred at ARCP.

5. TIAA-CREF understands that it did not have to seek appointment as lead plaintiff in this case to participate in any potential recovery. Nonetheless, TIAA-CREF was prompted to seek to serve as lead plaintiff in this case because of the substantial harm inflicted upon TIAA-CREF and other ARCP shareholders, which harm was precipitated by accounting improprieties and serious governance failures at ARCP. TIAA-CREF understands and willingly undertakes the lead plaintiff role Congress envisioned when it enacted the Private Securities Litigation Reform Act of 1995.

6. Because TIAA-CREF is committed to actively directing, not just passively overseeing, the prosecution of this case, TIAA-CREF has retained an experienced outside litigation

---

<sup>1</sup> TIAA-CREF is not a distinct legal entity, it is the trade name under which TIAA, CREF and their affiliated entities operate.

team that will be directly overseen by TIAA-CREF's internal Law and Corporate Governance department, which is comprised of 65 lawyers and 23 legal analysts and paralegals, to direct lead counsel's efforts on behalf of the class and ensure the cost-efficient prosecution of this action.

7. In addition to executing a Certification and negotiating the terms of a retainer and fee agreement, TIAA-CREF has implemented litigation protocols for this case. TIAA-CREF has also instructed counsel that TIAA-CREF will direct all major litigation decisions throughout the course of the litigation so that TIAA-CREF can fulfill its responsibilities as lead plaintiff.

8. Robbins Geller Rudman & Dowd LLP was selected as proposed lead counsel because of its success in obtaining substantial shareholder recoveries and implementing governance reforms, its prior experience before this Court and its willingness and commitment to prepare and present this case at trial.

9. TIAA-CREF is motivated to serve as lead plaintiff to ensure the action is prosecuted in an effective and cost-efficient manner and an optimal outcome is obtained for the entire putative class in this case. In furtherance thereof, TIAA-CREF determined it was in the class's best interest to maximize the *net* recovery by negotiating an arrangement that protects and advances those interests. In addition, TIAA-CREF opted to employ a single lead plaintiff and single lead counsel model to avoid duplication of effort and minimize expenses which may ultimately be borne by the class.

I declare under penalty of perjury that the foregoing is true and correct. Executed on December 29, 2014.

  
JONATHAN FEIGELSON